

Ministry of the Solicitor General

***Emergency Order(s) pursuant to the
Emergency Management and Civil Protection Act***

Proposed Items for Review

	Order Number(s) and Title(s)	Amendment	Revocation
1.	Declaration of Emergency	☐	☐
2.	Critical Infrastructure (New Order)	☐	☐
3.		☐	☐

☐ The Ministry acknowledges that a communications snapshot must be filed to complete this submission.



Deputy Minister

February 12, 2022

Date



Minister

February 12, 2022

Date

s 1. Proposal Context

On February 11, 2022, the Premier declared a province-wide emergency pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (EMCPA). The emergency was declared as a result of interference with transportation infrastructure and other critical infrastructure that is occurring across the province, which is preventing the movement of people and the delivery of essential goods and services. The Premier's declaration of emergency terminates after 72 hours unless Cabinet confirms the declaration by order before that time.

The Ministry of the Solicitor General is seeking approval of an Order in Council to approve the Premier's declaration, and for an emergency order in connection with the declaration.

The Emergency Order would come into effect upon filing and:

- A) Prohibits individuals from
 - preventing someone from travelling to or from critical infrastructure (see definition below)
 - preventing the ordinary use of critical infrastructure
 - causing either of the above to occur, whether directly or indirectly
 - assisting an individual to knowingly help them do anything above
 - preventing someone from travelling to or from walkways, bridges, and highways (other than 400-series highways, which are already captured as "critical infrastructure"), and preventing the ordinary use of them, if doing so would:
 - prevent the delivery of essential goods or services,
 - severely disrupt ordinary economic activity, or
 - seriously interfere with the safety, health or well-being of members of the public.
- B) Gives police officers and other provincial offences officers the power to do the following when they have reasonable grounds to believe that an individual is not complying with the requirements above (in A):
 - Order the individual to stop contravening the emergency order,
 - If there is more than one individual, order the individuals to disperse,
 - Order the individual to remove any object the individual used to contravene the order (e.g., a motor vehicle), whether the object was put there before or after this emergency order came into effect
 - Remove the object if the individual refuses to remove the object after being ordered
- C) Requires individuals to comply with the any of the above orders issued by provincial offences officers (under B)

- D) Gives the Registrar of Motor Vehicles and provincial offences officers the power to order owners or operators of vehicles contravening the order to remove their vehicles, requires the owners and operators to comply, and permits the removal of the vehicles if they don't comply.
- E) Gives the Registrar and Deputy Registrar of Motor Vehicles the power to make an order suspending or canceling licence plate permits, driver's licences and Commercial Vehicle Operator's Registration (CVOR) Certificates when the Registrar has reasonable grounds to believe that the holder of the permit, licence or certificate has contravened the order, or a CVOR certificate holder was the operator of a motor vehicle used to contravene the requirements in A, and the following rules apply:
- The individual has no right to be heard before the order is made;
 - The order comes into effect on the day and time set out in the order, even if the individual has not received notice;
 - Notice can be given any means that the Registrar or Deputy Registrar believes may be reasonable;
 - The order continues to apply even if there is an appeal or other proceeding relating to it, unless the court or tribunal orders otherwise; and
 - If the permit for a motor vehicle has been suspended or cancelled, a provincial offences officer can seize any number plates displayed on the motor vehicle, including if they are from another jurisdiction.

Critical infrastructure is defined as:

- (a) 400-series highways,
- (b) airports,
- (c) canals,
- (d) hospitals,
- (e) infrastructure for the supply of utilities such as water, gas, sanitation and telecommunications,
- (f) international and interprovincial bridges and crossings,
- (g) locations where COVID-19 vaccines are administered,
- (h) ports,
- (i) power generation and transmission facilities, and
- (j) railways.

**s. 2 Direction, Urgency and
Emergency Order Rationale**

Declaring a state of emergency is essential to protect critical infrastructure. Blockades over the past days and weeks are impacting supply chains by impeding the movement of goods, people and services. Ontario has tried to manage the impacts of the protests for the past two weeks by using other measures such as a court order to freeze the distribution of donations raised for the "Freedom Convoy". However, many individuals continue to impede access to or egress from the use of critical transportation infrastructure, including essential trade corridors.

Additionally, the safety, access to goods and services as well as the ability to go to work, has been impacted for many Ontarians, particularly those residing in Ottawa and Windsor.

s. 3 Type and Criteria for Emergency Order (s. 7 .0.2 of EMCPA)

This order is to be made pursuant to s. 7.0.2 of the EMCPA.

The LGIC must believe the order is necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property.

It can be argued that the order is necessary and essential to address serious harm to persons or substantial damage to property based on reports of harmful conduct at convoy protests and the significant impacts of prolonged protests on surrounding areas as well as trade and supply chains. There is a risk that this belief could be challenged on the basis that the activity precluded by the order is economically disruptive but not necessarily damaging to persons or property, but courts would likely show significant deference to the government's application of this criterion.

Additionally, in the LGIC's opinion, it must be reasonable to believe that,

(a) the harm or damage will be alleviated by the order; and

(b) making the order is a reasonable alternative to other measures that might be taken to address the emergency. (s. 7.0.2 (2))

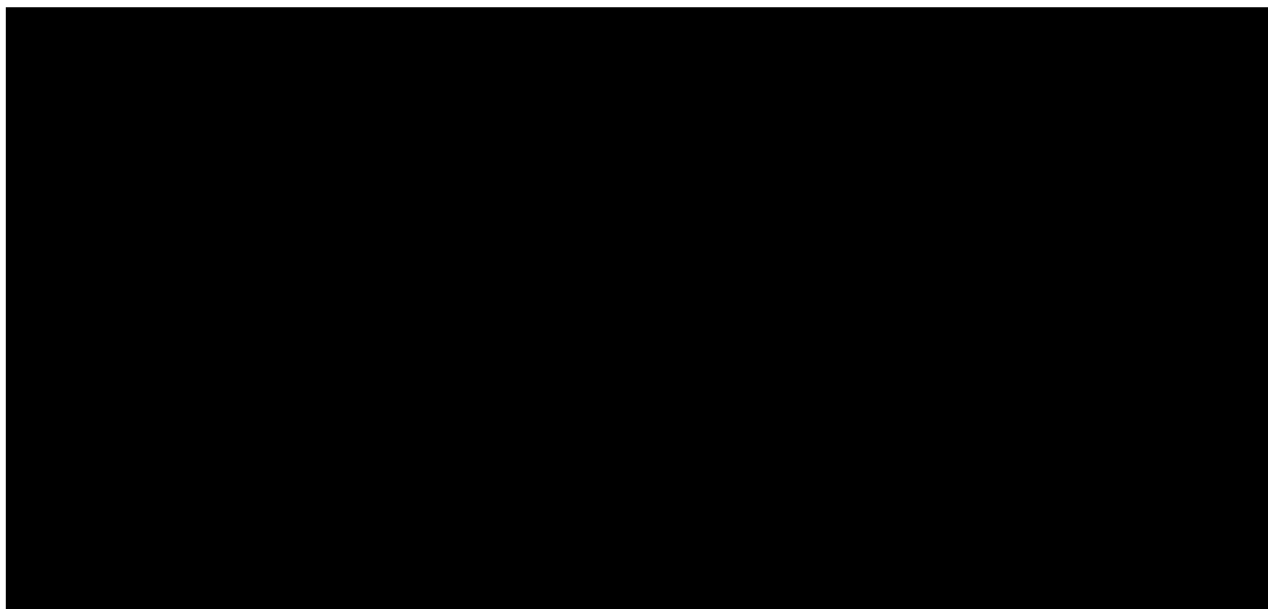
It is reasonable to believe the harm or damage will be alleviated by the order as the order will provide additional tools for law enforcement to address obstructions, such as the ability to order participants contravening the order to leave, disperse or remove objects being used for obstruction, and will make it an offence to commit various activities that contribute to obstruction. The order will also provide additional abilities to the Registrar to impose consequences for contravening the order to incentivize compliance.

Making the order is a reasonable alternative to other measures. Existing regulation-making powers, e.g., under the Highway Traffic Act, are insufficient to achieve the order's objectives, and statutory amendments would not be swift enough to result in immediate change.

The order can only apply where it is necessary, for as long as necessary (s. 7.0.2 (3)). It has been determined that the order must apply throughout the province to prevent the expected recurrence of obstructive activities in new locations once they are shut down at the current locations. The order automatically expires after 14 days if it is not renewed, unless revoked sooner.

The order would specifically be made under the following paragraphs of s. 7.0.2 (4):

- 2. Regulating or prohibiting travel or movement to, from or within any specified area.
- 6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property (specifically, removing property)
- 12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.
- 14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency.



s. 4 Approach and Intended Outcomes

The emergency order will impose a duty on individuals and vehicles to stop impeding access to or egress from the ordinary use of critical infrastructure, including through the use of a vehicle to block access. An individual's failure to comply with an order from an enforcement officer under this emergency order will amount to an offence under the EMCPA for breaching this order.

The penalty for breaching an order under the EMCPA if issued a notice of offence (ticketed) under the *Provincial Offences Act* (POA) is \$750. The maximum punishment for breaching an order charged under other mechanisms under the POA is one-year imprisonment and a fine of up to \$100,000 for an individual.

Police officers and other provincial offences officers will have the authority to enforce the orders.

In addition, the Registrar of Motor Vehicles and Deputy Registrar would have the power to make an order suspending or canceling licence plate permits, driver's licences and Commercial Vehicle Operator's Registration Certificates.

License suspension would not take place immediately upon a breaching the order.

s. 5 Implementation

If approved, the emergency declaration would come into effect immediately on signing, with orders coming into effect upon filing.

Ongoing communication and updated resources will be available to assist law enforcement to effectively and consistently apply enforcement tools to enforce the new measures. New measures will be communicated to law enforcement personnel through All Chiefs Memoranda (ACM). While SOLGEN does not direct police service operations or instruct them on the application of police powers, information about emergency measures, and new authorities, as well as associated penalties related to any new orders will be shared with all police services.

The ACM will also provide information on the Registrar's role/authority to suspend or cancel the plate portion of a permit, a driver's licence or a Commercial Vehicle Operator Registration (CVOR) certificate including a police officer or provincial offense officer's role in completing and submitting a customized digital form to support the Registrar's authority.

Once the Registrar has been provided with the required evidence, they will review the case and may suspend and/or revoke the driver's licence, licence plate, or CVOR registration associated with any person acting in contravention of the Emergency Order, or any vehicle being used to commit a contravention, following the special rules for revocations and suspensions set out within the emergency order..

Once a suspension has been issued, it will be uploaded to Canadian Police Information Centre (CPIC) overnight, where it will be viewable on the next business day.

Critical information will also be shared with key partner enforcement ministries including the Ministry of Labour, Training and Skills Development and the Ministry of Municipal Affairs and Housing. The ministry's dedicated Enforcement Support Line and email resource will also make information available to all provincial offences officers, including but not limited to police services.

s. 6 Risks

Civil Liberties Organizations Concerns

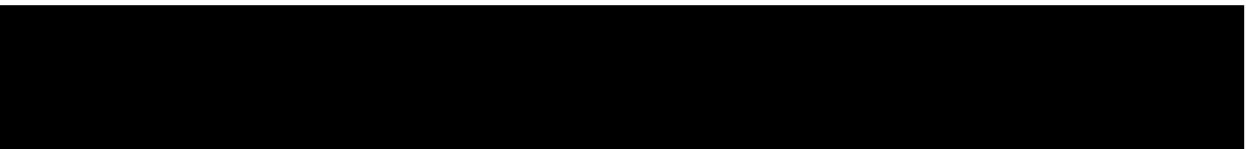
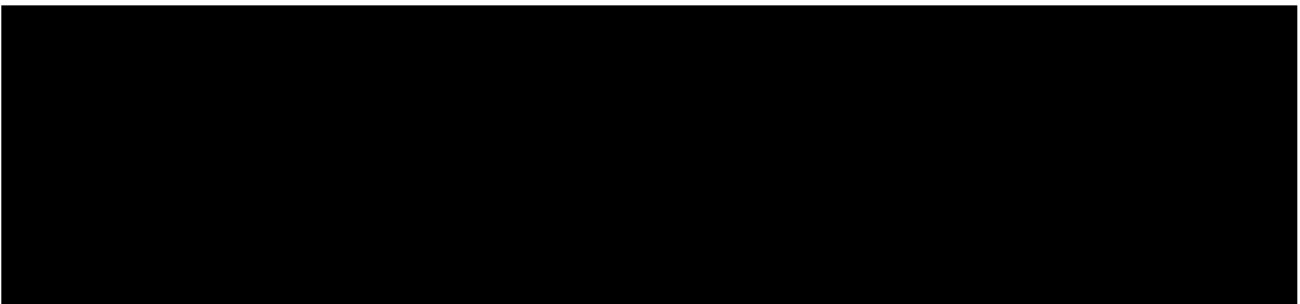
There will likely be a concern that the government is denying the right to freedom of speech as well as freedom to protest. It will be important when communicating with the public that the orders are not intended to stop peaceful protests or freedom of speech but rather to stop the blockade to transportation and critical infrastructure as well as protect the safety of Ontarians.

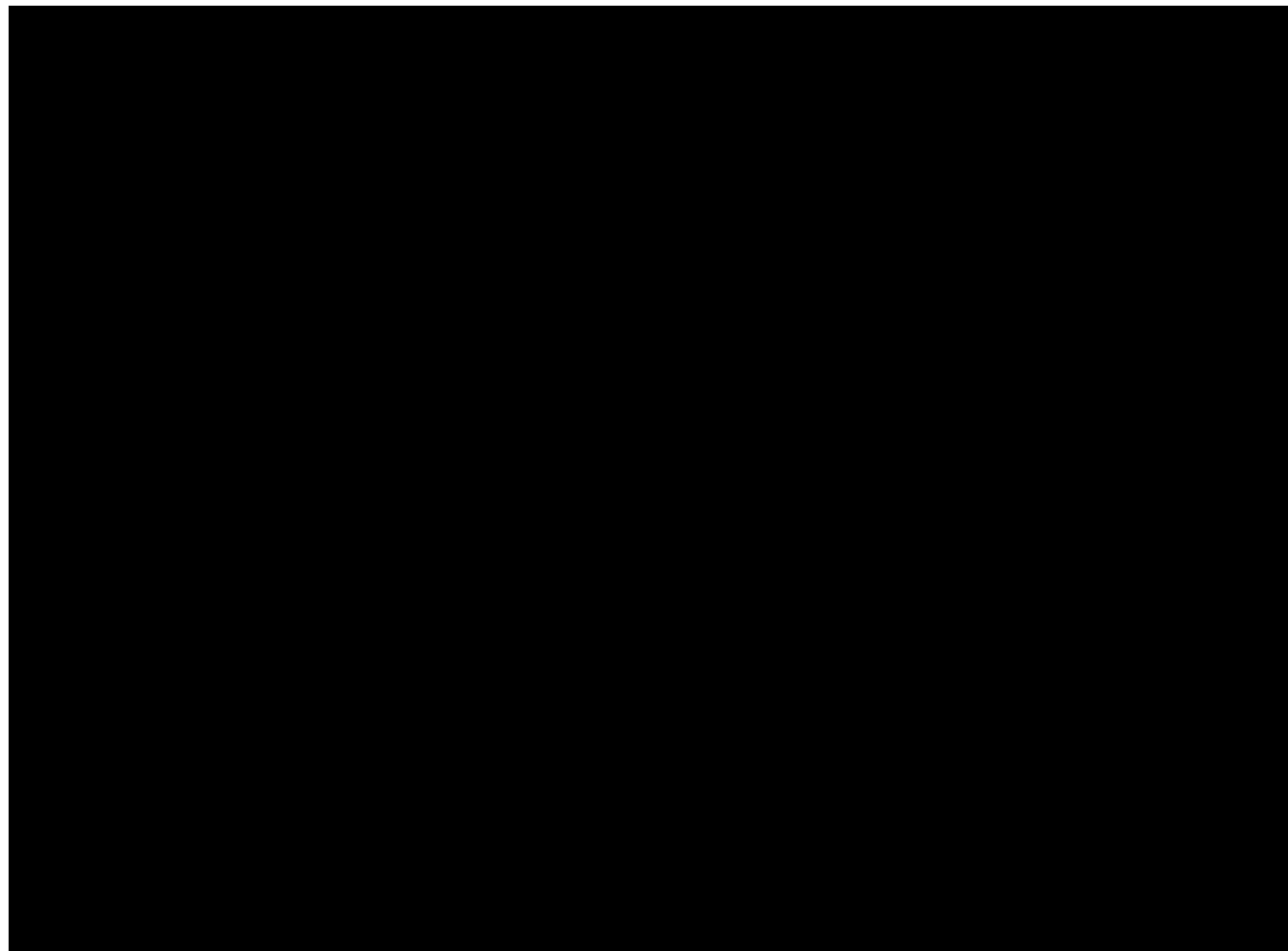
Public Reaction

There is likely to be a mixed public reaction as some individuals who support the protestors will oppose the government's use of an emergency declaration with associated orders designed to end the protest. However, others will respond positively to the government taking action to end the protests in order to restore order, protect Ontarians, and allow goods to move across the border supporting the economy.

Individuals Whose Licence Becomes Suspended

If licence suspensions take place quickly, there is a risk that an individual whose licence was suspended might not know precisely when the suspension takes place. Enforcement personnel may be perceived to not be compliant with their responsibilities if they move someone on when their licence has been suspended. It will be important to ensure that an individual is not prevented from driving away from the scene and also that they do not drive inadvertently without a valid licence. There are online tools that an individual can use to find out the status of their licence. Equally given the volume of potential suspensions that may be sought, there is a risk that suspensions could take longer than expected.

Legal RisksConstitutional Analysis



Enforcement Capacity

There is risk that due to competing local public safety priorities and increased calls for services, local police services may have limited capacity to mobilize a local enforcement response, redeploy or share resources across communities.

In the face of constrained resources and the requirements of new measures, police services may react negatively to any administratively burdensome solution that draws police resources away from the front lines, if they are required to adopt net new processes to support MTO in the suspension or revocation of licences for private and/or commercial vehicles. Depending on the take-up of appeal provisions, additional downstream administrative impacts may also apply.

There is also a risk that due to the likely chaotic situations found at blockades, it may be difficult to fully ascertain the people who drove vehicles to a blockade and the degree to which vehicle owners authorized their property to be used in a blockade. As a result, it is possible that suspensions may affect licences or certificates related to persons who were not primary participants in a blockage.

Under a normal suspension that only applies after an appeal or appeal period has been exhausted, the culpability of a person would be determined through those appeal processes. Under an immediate suspension, a person affected by a suspension would

remain suspended until the suspension period elapses, or an appeal overturns the suspension.

The risks associated with these scenarios may be reduced if the suspension periods are of a short duration, and if the Registrar limits their actions under the order to suspensions rather than cancellations, which are either long-term or permanent in nature.

s. 7 Communications

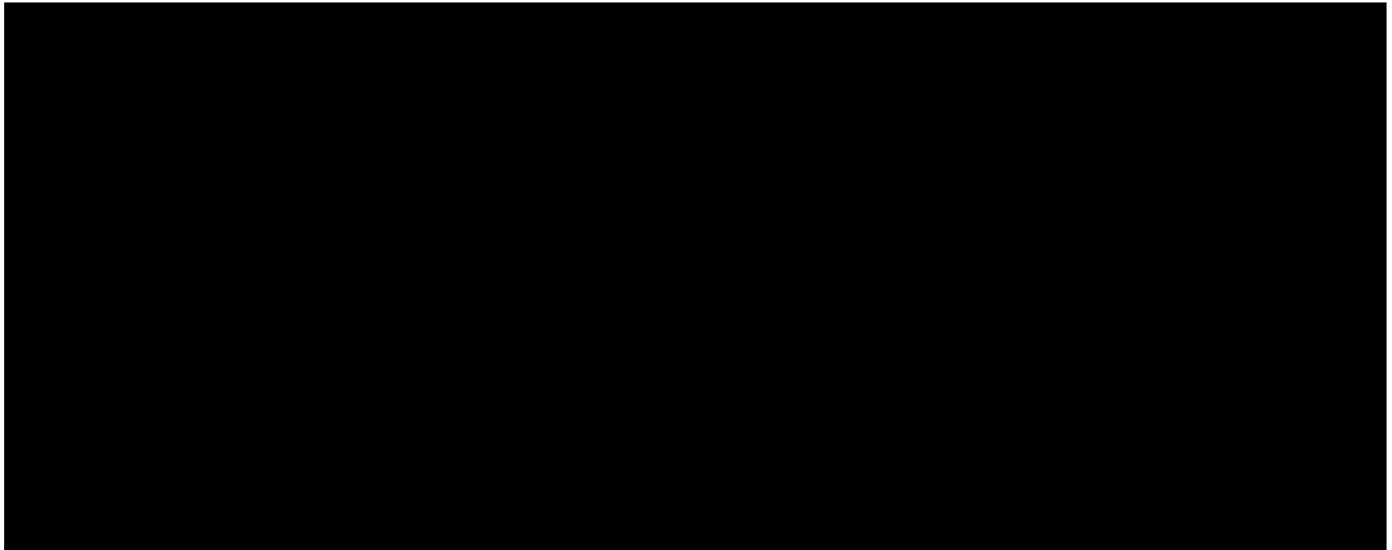
If approved, the emergency declaration would come into effect immediately on signing, with orders coming into effect upon filing.

An emergency declaration order made by the LGIC would terminate after 14 days at which point the LGIC could order one 14-day extension. Following the initial 28-day period, further extensions of up to 28 days at a time could only be made by the Legislative Assembly on the recommendation of the Premier.

The proposed emergency declaration and emergency orders was announced via a Premier's podium on February 11, 2022. The orders will be communicated directly to media through the Premier's Office. The ministry will also update [Ontario.ca/alert](https://ontario.ca/alert) accordingly.

Key Message

- Public safety is a top priority of this government. It is critical the government continues to take the steps necessary to protect the economy, critical infrastructure, border crossings, streets and highways from disruption. Measures and restrictions will be enforced, and fines levied.



s. 9 Contacts and Appendices

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